

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 WILLIAM FERGUSON,

4 Plaintiff

5 v.

6 JUDGE,

7 Defendant.

Case No.: 3:19-cv-00134-MMD-WGC

**Report & Recommendation of
United States Magistrate Judge**

Re: ECF Nos. 1, 1-1

8 This Report and Recommendation is made to the Honorable Miranda M. Du, United States
9 District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C.
10 § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

11 Plaintiff has filed an application to proceed in forma pauperis (IFP) (ECF No. 1) and pro se
12 complaint (ECF No. 1-1).

13 **I. IFP APPLICATION**

14 A person may be granted permission to proceed IFP if the person “submits an affidavit that
15 includes a statement of all assets such [person] possesses [and] that the person is unable to pay
16 such fees or give security therefor. Such affidavit shall state the nature of the action, defense or
17 appeal and affiant’s belief that the person is entitled to redress.” 28 U.S.C. § 1915(a)(1); *Lopez v.*
18 *Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating that 28 U.S.C. § 1915 applies to all
19 actions filed IFP, not just prisoner actions).

20 The Local Rules of Practice for the District of Nevada provide: “Any person who is unable
21 to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The
22 application must be made on the form provided by the court and must include a financial affidavit
23 disclosing the applicant’s income, assets, expenses, and liabilities.” LSR 1-1.

1 “[T]he supporting affidavits [must] state the facts as to [the] affiant’s poverty with some
 2 particularity, definiteness and certainty.” *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)
 3 (quotation marks and citation omitted). A litigant need not “be absolutely destitute to enjoy the
 4 benefits of the statute.” *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

5 A review of the application to proceed IFP reveals Plaintiff cannot pay the filing fee;
 6 therefore, the application should be granted.

7 **II. SCREENING**

8 **A. Standard**

9 “[T]he court shall dismiss the case at any time if the court determines that-- (A) the
 10 allegation of poverty is untrue; or (B) the action or appeal-- (i) is frivolous or malicious; (ii) fails
 11 to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant
 12 who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(A), (B)(i)-(iii).

13 Dismissal of a complaint for failure to state a claim upon which relief may be granted is
 14 provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii) tracks
 15 that language. As such, when reviewing the adequacy of a complaint under this statute, the court
 16 applies the same standard as is applied under Rule 12(b)(6). *See e.g. Watison v. Carter*, 668 F.3d
 17 1108, 1112 (9th Cir. 2012) (“The standard for determining whether a plaintiff has failed to state a
 18 claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule
 19 of Civil Procedure 12(b)(6) standard for failure to state a claim.”). Review under Rule 12(b)(6) is
 20 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723
 21 (9th Cir. 2000) (citation omitted).

22 The court must accept as true the allegations, construe the pleadings in the light most
 23 favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor. *Jenkins v. McKeithen*, 395

1 U.S. 411, 421 (1969) (citations omitted). Allegations in pro se complaints are “held to less stringent
2 standards than formal pleadings drafted by lawyers[.]” *Hughes v. Rowe*, 449 U.S. 5, 9 (1980)
3 (internal quotation marks and citation omitted).

4 A complaint must contain more than a “formulaic recitation of the elements of a cause of
5 action,” it must contain factual allegations sufficient to “raise a right to relief above the speculative
6 level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “The pleading must contain
7 something more ... than ... a statement of facts that merely creates a suspicion [of] a legally
8 cognizable right of action.” *Id.* (citation and quotation marks omitted). At a minimum, a plaintiff
9 should include “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570; *see*
10 *also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

11 A dismissal should not be without leave to amend unless it is clear from the face of the
12 complaint that the action is frivolous and could not be amended to state a federal claim, or the
13 district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d
14 1103, 1106 (9th Cir. 1995); *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

15 **B. Plaintiff’s Complaint**

16 Plaintiff’s complaint names generally “judge” as the defendant in this case. His complaint
17 is disjointed and difficult to decipher. He states that a communication came into his home that
18 sounded like politicians and others telling him to be quiet. He goes on to state someone is hurting
19 him, and he thinks it is “Jim.” He states that someone is stealing his social service deposits from
20 California and running up his credit cards.

21 As the Supreme Court has noted, “a litigant whose filing fees and court costs are assumed
22 by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous,
23 malicious, or repetitive lawsuits.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). “To prevent such

1 abusive or captious litigation, § 1915(d) [now § 1915(e)(2)(B)(i)] authorizes federal courts to
2 dismiss a claim filed [IFP] ‘if the allegation of poverty is untrue, or if satisfied that the action is
3 frivolous or malicious.’” *Id.* “Dismissals on these grounds are often made *sua sponte* prior to the
4 issuance of process, so as to spare prospective defendants the inconvenience and expense of
5 answering such complaints.” *Id.* (citation omitted). A complaint is frivolous “where it lacks an
6 arguable basis either in law or in fact.” *Id.* This term “embraces not only the inarguable legal
7 conclusion, but also the fanciful factual allegation.” *Id.* Section 1915(e)(2)(B)(i) “accords judges
8 not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also
9 the unusual power to pierce the veil of the complaint’s factual allegations and dismiss those claims
10 whose factual contentions are clearly baseless.” *Id.* at 327. This includes “claims of infringement
11 of a legal interest which clearly does not exist” and “claims describing fantastic or delusional
12 scenarios.” *Id.* at 327-28.

13 Here, Plaintiff does not state any claim with a basis in law or fact. Instead, his complaint
14 contains "delusional scenarios" and disjointed statements. Therefore, it is recommended that the
15 action be dismissed with prejudice.

16 III. RECOMMENDATION

17 IT IS HEREBY RECOMMENDED that the District Judge enter an order:

18 (1) **GRANTING** Plaintiff’s IFP application (ECF No. 1). Plaintiff is permitted to
19 maintain this action without prepaying the filing fee or giving security therefor. This
20 order granting IFP status does not extend to the issuance of subpoenas at government
21 expense.

22 (2) The complaint (ECF No. 1-1) should be **FILED**.
23

1 (3) The action should be **DISMISSED WITH PREJUDICE** for failing to state a claim
2 upon which relief may be granted.

3 The Plaintiff should be aware of the following:

4 1. That he may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to
5 this Report and Recommendation within fourteen days of being served with a copy of the Report
6 and Recommendation. These objections should be titled “Objections to Magistrate Judge’s Report
7 and Recommendation” and should be accompanied by points and authorities for consideration by
8 the district judge.

9 2. That this Report and Recommendation is not an appealable order and that any notice of
10 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed
11 until entry of judgment by the district court.

12 Dated: July 11, 2019.

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14 William G. Cobb
15 United States Magistrate Judge
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